



#15 Response

127/02185 A04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Zion AZAR  
Serial Number: 09/828,997  
Filed: April 9, 2001  
For: METHOD OF SELECTIVE PHOTOTHERMOLYSIS OR HAIR  
REMOVAL (AMENDED)  
Art Unit: 3739  
Examiner: Rosiland S. KEARNEY

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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RESPONSE TO FINAL OFFICE ACTION

Sir:

Further to a final office action dated July 2, 2003, the following is applicant's response.

Claims 3-27 are present in the application and stand rejected under 35 U.S.C. §102(e) as being anticipated by Chess. Applicant respectfully traverses this rejection and submits that the Examiner has not made a *prima facie* case of anticipation.

The present application claims priority, *inter alia*, from USSN 08/707,562, now US Patent 5,759,200. The earlier application was filed on September 4, 1996, which is earlier than the earliest priority date claimed by Chess, namely June 17, 1997.

Applicant has perused '200 patent and submits that at least claims 3 and 25 are fairly based on the disclosure of the patent. Thus, irrespective of the contents of the provisional application from which Chess claims priority (which may or may not have the same disclosure as the patent that issued), Chess is not *prior* art at least against both independent claims (at least as they are based on disclosure of the '200 patent) and at least these claims are not *prima facie* anticipated.

Applicant further submits that the present application has a priority date for all of its contents (May 12, 1998) which is prior to the date of filing of the Chess application (June 17, 1998), and that the Examiner appears to rely on the priority date of the *provisional* application from which Chess claims priority. Since this application was not submitted to applicant and

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since it may, in fact, not have any relevant disclosure, applicant is unable to comment on the other claims. If the Examiner contends that some of the dependent claims may be unpatentable since, *inter alia*, they can not claim priority from the CIP parent *and* also appear in the provisional parent of Chess, the Examiner is invited to reopen prosecution. In the absence of such finding by the Examiner and the presentation of a rebuttable rejection based on this finding, applicants believe that there is no *prima facie* rejection to answer.

A copy of US 5,759,200 was previously cited and is available to the Examiner in the file.

The application is believed to be in order for allowance. Notice to that effect is respectfully solicited.

If the Examiner would like to discuss the case, she is respectfully invited to call the undersigned at his office in Israel. A toll free number {1 (877) 428-5468} is available which connects directly to the undersigned's office in Israel. As of October 3, Israel is 6 hours ahead of Washington, but will be 7 hours ahead when the US goes off daylight savings. The undersigned can generally be reached at the office until 7:00 PM Israel time, Sunday through Thursday.

Respectfully submitted,  
Zion AZAR



Paul FENSTER  
Registration No. 33,877

October 2, 2003

William H. Dippert, Esq.  
Reed Smith LLP  
599 Lexington Avenue, 29th Floor  
New York, NY 10022-7650



PTO/SB92 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

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William H. Dippert  
Registration No. 26,723

Reed Smith LLP  
599 Lexington Avenue  
29th Floor  
New York, New York 10022-7650  
Tel: 212-521-5400; Fax: 212-521-5450

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Enclosures: (1) Transmittal Letter (in duplicate); (2) Response To Final Office Action (2 pages);  
(3) Acknowledgement Postcard.

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